

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

DANIEL A.,

Claimant,

and

SAN GABRIEL/POMONA REGIONAL
CENTER,

Service Agency.

OAH No. L2006030991

DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Pomona, California, on May 17, 2006.

Daniel A. (Claimant), who was not present, was represented by Jwana A., Claimant's mother.

Daniela Martinez, Program Manager, represented San Gabriel/Pomona Regional Center (Service Agency or SGPRC).

The parties presented oral and documentary evidence. The matter was submitted for decision on May 17, 2006.

ISSUE

Should the Service Agency be required to fund private swimming lessons at the Monrovia YMCA at the rate of \$30 per half hour?¹

¹ This was the issue as framed by the parties at the administrative hearing.

FACTUAL FINDINGS

1. Claimant is nearly five years old and a consumer receiving services from the Service Agency under the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code² section 4500 et seq.), based on a diagnosis of autism.

2. Claimant's mother has requested that the Service Agency fund private swimming lessons at the Monrovia YMCA. The Service Agency denied this request in a letter dated March 16, 2006, stating that:

Swimming lessons provided by the YMCA are a generic resource available at the same cost to all members in the community. The YMCA offers swimming lessons to disabled and non-disabled individuals at the same rate. Parents are responsible for providing appropriate social/recreational activities for their minor child. Daniel's physical and motor development are [*sic*] being addressed by services provided by his school district such as occupational therapy. Additionally, individual swimming lessons do not give the opportunity for socialization with other children, and swimming lessons are considered to be parental responsibility for all children, regardless of disability.

On March 20, 2006, Claimant submitted a Fair Hearing Request, and this matter ensued.

3. Claimant lives with his biological parents and his two older siblings. He currently is in a public school within the Duarte Unified School District (school district), where he receives the attention of a one-to-one aide, and participates in the extended school year program. The school district has provided training for the aide in "applied behavioral analysis" techniques, to be used while Claimant is in school, along with a behavioral program consultant to oversee Claimant's progress. The school district also funds occupational therapy and speech therapy, each two times per week.

4. The Service Agency funds a behavioral treatment program, known as discrete trial training, in Claimant's home for 14 hours per week, plus six hours per month for supervision, through SEEK Education, Inc. The Service Agency funds eight hours per week of floor time, another intensive home-based program to address Claimant's functional-emotional development, communication skills, social interactions, and emotional regulation, provided by Real Connections Child Development Institute. Both programs report that Claimant has made consistent progress. The Service Agency provides 16 hours of respite each month and reimburses Claimant's parents \$50 per month for diapers. This summer, the Service Agency will fund a structured camp program for four weeks while Claimant is on break from public school.

² All statutory references are to the Welfare and Institutions Code, unless specified otherwise.

5. Claimant's mother's "number one" concern is for Claimant's safety. She said that, because of Claimant's autism, he is fascinated and drawn by the water, but he is not aware of the danger it poses for him. She said that he will just go and jump in the water without any understanding of the danger that he may drown. She inferred that since he is no longer a toddler, it is more difficult to control his every movement in order to prevent him from going in the water. She wants for him to be taught to swim so that he will not drown.

6. Claimant's mother said that the Service Agency's assertion, that swimming lessons are a generic resource available at the same cost to all members in the community regardless of a disability, is not true. Her family is a member of the Santa Anita Family YMCA ("Y") and she has discussed the matter with Wendy L. Williams, the aquatics and sports director. The "Y" offer group lessons costing \$55 for a series that continues for approximately five weeks. The "Y" will not allow Claimant to participate in group swimming lessons because of his autism. The "Y" will only offer Claimant one-on-one swimming lessons, which are \$30 per half hour lesson. Claimant's mother presented a letter from the director corroborating her statements. (Exhibit A.)

7. Claimant's mother also presented a letter from Susan Lorin, a licensed occupational therapist with Rosemary Johnson and Associates Clinic Inc., where Claimant receives occupational therapy twice a week. Ms. Lorin's letter states that swimming provides a great deal of somatosensory (tactile and proprioceptive) stimulation, which will assist Claimant with developing his neurological foundation. (Exhibit A.)

8. The Service Agency also suggested that alternative generic resources were available within Claimant's community, such as Duarte Fitness Center, run by the City of Duarte, which offers two-week intensive swimming lessons for approximately \$50, after a person has made application and been approved for financial assistance. The Service Agency also asserted that the "Y" will provide financial assistance, if Claimant's parents meet the financial criteria. In response, Claimant's mother said that the "Y" will not discount the private lessons, and she believes the swim instructors at the Duarte Fitness Center are not professionals experienced or trained in teaching persons with autism.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, the Legislature codified the state's responsibility to provide for the needs of developmentally disabled individuals and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

2. The Lanterman Act gives regional centers, such as the Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (§ 4620 et seq.) Under section 4512, subdivision (b), the determination of which services and supports are necessary for each consumer shall be made through the individual program plan (IPP) process. The determination is made on the basis of the

needs and preferences of the consumer, and shall include consideration of a range of service options, the effectiveness in meeting the goal, and the cost-effectiveness of each option. Thus, regional centers are responsible for developing and implementing an IPP, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

3. Section 4512, subdivision (b), defines “services and supports for persons with developmental disabilities,” in pertinent part, as follows:

“Services and supports for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. . . .

4. There is no dispute that Claimant could benefit from swimming lessons. The Service Agency is not required, however, to provide every type of training or service that will benefit Claimant. The private swimming lessons at the “Y” are not a “specialized service” under section 4512, subdivision (b). Further, there is no assessment or clinical opinion presented from which to conclude that private swimming lessons are a cost-effective method to meet Claimant’s individual needs. (Findings 1-8.)

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5. The Service and Agency and Claimant's parents have devised a set of goals for Claimant. These are set forth in his IPP. Claimant is receiving necessary services from the Service Agency and the school district to address specific goals related to his autism, encompassing his intellectual, physical, social, emotional and behavioral needs. There has been no showing that Claimant needs swimming lessons for learning or behavior in ways that are not already being served. The parents' obligation to instruct a child for his or her safety in the water would be no different whether the child is developing normally or developmentally delayed. Without more evidence relating to a specific need based on Claimant's autism, swimming lessons to teach Claimant the fundamentals of water safety are his parents' responsibility.

ORDER

Claimant's appeal is denied

Dated: _____

MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.